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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,214	10/15/2003	Sterling E. Lani Bradley	ARWZ 2 00228	5873
27885	7590	09/11/2006	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			HUYNH, KHOA D	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/686,214

Applicant(s)

LANI BRADLEY ET AL.

Examiner

Khoa D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-12,15,16 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-12,15,16 and 18-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-12, 15, 16 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Venne et al. (5713681) in view of Fischer et al. (2005/0031398) and Lehman (2782764).

The Venne et al. reference discloses a fluid applicator. The applicator includes an elongated hollow body (20) having a longitudinal axis, a shoulder portion with a circular side wall (32) and a conical intermediate side wall (40) with a planar top (Fig. 2) and a neck (44), a central recesses portion (58) including a first side (54), a second side (54 in Fig. 1) and a base side (about 38 in Fig. 2), and a cylindrical bottom portion (34).

The Venne et al. reference DIFFERS in that it does not specifically include a single groove as claimed. Attention, however, is directed to the Fischer et al. reference which discloses another fluid applicator having a central recessed portion (Fig. 2) including a first and second sides (about 22) and a base side (about 30). The base side further includes a groove (at 60) extending in the central recessed portion across the base side (Fig. 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made

to have modified the Venne et al. reference by employing a groove (one or two depending on the suitability for the intended use), in view of the teaching of Fischer et al., in order to permit convenient mating of the applicator with hand of a person and ergonomic use of the applicator.

The Venne et al. reference also DIFFERS in that it does not specifically disclose that the central recessed portion has an approximate triangular cross-section as claimed. Attention, however, is directed to the Lehman reference which discloses a fluid applicator having a central recessed portion, wherein the central recessed portion having an approximate triangular cross-section including a base side (6), a first side (7) and a second side (8). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Venne et al. reference by employing a central recessed portion having an approximate triangular cross-section in view of the teaching of Lehman. Such modification would be considered a mere choice of a preference shape for a gripping portion of an applicator on the basis of its suitability for the intended use.

Furthermore, the modified Venne et al. reference also discloses that the triangular cross-section of the central recessed portion has the shape of an isosceles triangle (Lehman, Fig. 3).

Response to Amendment

3. Applicant's amendment, filed on 06/19/2006, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

Response to Arguments

4. Applicant's arguments filed on 06/19/2006 with respect to the pending claims have been fully considered. However, such arguments are deemed not persuasive.

Applicant asserts that neither Venne et al. alone nor Venne et al. in combination with Lehman teaches a single groove as claimed. See Remarks section, pages 7-8. Nevertheless, such assertions are moot in view of the new ground(s) of rejection under 35 U.S.C. 103(a) as being unpatentable over Venne et al. (5713681) in view of Fischer et al. (2005/0031398) and Lehman (2782764).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Applicant's prior submission of an information disclosure statement under 37 CFR 1.97(c) on 03/31/2005 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit: 3751

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A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a horizontal line drawn underneath the signature.

Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
09/05/2006